

ACCESS ROAD POLICY AND RECIPROCAL ACCESS AND EASEMENT EXCHANGE POLICY

The Department has undertaken an extensive review of the policies and procedures associated with the grant of easements for private access roads and the reciprocal access and easement exchange program.

Similarities exist between both the easement grants and the reciprocating/exchange of easements with cooperators. Both new policies address the preference of the state in obtaining access to state trust lands in exchange for granting access to private parties/cooperators and both address additional fees to be assessed for future potential development. Additionally, both policies require creation of a Road User's Conveyance at the time of development or partial assignment to a third-party user.

The Department solicited comments to both policies from the public and our general cooperators of reciprocal agreements. The policies were made available through the DNRC webpage and the Board's webpage. In addition, Department staff held several meetings with the cooperators to discuss the impact of the proposed policies on future reciprocal opportunities.

The attached policies are the product of the base concept of the Board, including comments received from the public and our cooperators, to provide a comprehensive evaluation and review of applications for access to private lands for residential and subdivision development purposes and reciprocal opportunities with the public and our general cooperators.

Outlined below is a synopsis of each policy and a general discussion of the policy.

Access Road Policy

This policy was originally enacted by the Board in 1995 to address the increase in private access road applications the Department was receiving. The policy was in effect until 2005 when it was amended to address issues of inconsistencies within statutes that had been amended and added since the original policy.

As a result of the Board's discussion at the November, 2005 meeting regarding private access roads and development potential of private lands, the Department identified several components currently used in other states that could be beneficial to Montana. Specific discussion regarding issues the Department believes are critical to a successful easement program are outlined below.

- **Limited Term v. Perpetual:** The current Access Road Easement Policy does provide for limited term or perpetual access easements to be granted and this would remain unchanged in the new, proposed policy. Each access easement application that will be processed under this proposed policy will be carefully evaluated by the Department for a recommendation to the Board of a limited term easement versus a perpetual easement.
- **Reciprocal Opportunities:** The proposed policy more firmly asserts the desire of the state to achieve reciprocating access to state lands where possible. In cases wherein applicants have constructed roads in trespass on state lands or purchased property with the knowledge that there is no legal access and the only available access is through the state, the recommendation will be that the applicant provide access to isolated state trust lands (may not necessarily be within the vicinity of the proposed easement grant).
- **Minimum Width:** In review of other states' policies, it was determined that most states limit private access roads to a maximum width of thirty (30) feet wide. The Department agrees with this standard, however, there are situations wherein additional width may be

necessary. As such, the Department recommends that a standard of thirty (30) feet wide be adopted with the ability of the Department to require additional width as necessary.

- **Valuation:** While all states generally receive full fair market value of the land for the interest disposed of through the grant of an access easement, other fees are sometimes charged based upon the purpose/use of the easement. For example, access to a planned subdivision increases the value of the lots within the subdivision and, typically, a sixty-foot (60) width is necessary for subdivision purposes. In the event access across state trust lands is for such use, conveyance fees are assessed for each subdivision lot being accessed, as well as fees for the road width exceeding the standard thirty-foot (30) road. Payment of this fee shall occur at the time of sale of an existing tract of record, the creation of a new tract or tracts of record by subdivision or partial assignment of the easement rights to a third party. The Department proposes the valuation methodology described in detail on pages five (5) and six (6) of the draft policy be adopted to capture such extraneous use. An example of this valuation proposal is as follows:

Assuming Land Value @ \$1,500/acre in Lewis & Clark County for One Mile of Road to Subdivision

30-foot Width = 3.64 Ac. (3.64 x \$1,500)	Add. 30-foot for Subdiv. (30 x \$1.00 x 320 rods)	Access to 50-lot Subdiv. (Conveyance Fee = 50 x \$500)	Total Income to Trust Beneficiary
\$5,460.00	\$9,600.00	\$25,000.00	\$40,060.00

Reciprocal Access and Easement Exchange Policy and Procedures:

The reciprocal access/easement exchange policy was recently revised to address valuation concerns and to more accurately reflect the current process for the preparation and submission of reciprocal access/easement exchange packages.

- **Perpetual Easements:** All reciprocal access agreements and easement exchanges will be permanent, perpetual easements.
- **Minimum Width:** All reciprocal access agreements and easement exchanges will reciprocate 60-foot easement widths unless circumstances require a different width. Such circumstances are further outlined under Sections IV.C.3 and 4.
- **Valuation:** The full market value of the easement includes the proportional land and road values involved in the reciprocal access or easement exchange. In addition to the full market valuation process, the Department proposes implementation of a conveyance fee. Payment of this fee shall occur at the time of sale of an existing tract of record, the creation of a new tract or tracts of record by subdivision or partial assignment of the easement rights to a third party.

Recommended Action:

The Director recommends that the Land Board approve the revised Access Road Policy and the Reciprocal Access and Easement Exchange Policy with an immediate effective date.